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ABSTRACT

This paper relates the legal requirements regarding employee selection and equal employment opportunity. The 1964 Civil Rights Act, Title VII; the interpretations of Title VII by the Equal Employment Commission; the case of Griggs v. Duke Power Co. (1971); and pertinent questions for employers, following the Griggs case, are examined. (Author)

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Employee Selection and Equal Employment Opportunity

by

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I. 1964 CIVIL RIGHTS ACT, TITLE VII - EQUAL EMPLOYMENT OPPORTUNITY

II. EQUAL EMPLOYMENT OPPORTUNITY COMMISSIONS INTERPRETATIONS OF TITLE VII

III. GRIGGS v. DUKE POWER CO. (1971)

IV. QUESTIONS FOLLOWING THE GRIGGS CASE

1964 CIVIL RIGHTS ACT - PUBLIC LAW 88-352 - July 2, 1964

TITLE VII - EQUAL EMPLOYMENT OPPORTUNITY

I. To Whom Applicable: Today, with exceptions which are specified, it applies to employers engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar week in the current or preceding calendar year, etc.

II. Things Proscribed: Employment actions that discriminate against any individual because of race, color, religion, sex, or national origin Included actions affecting employment opportunities, compensation, terms, conditions, or privileges of employment.

III. Things Permitted: It is not an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin.

IV. Equal Employment Opportunity Commission: 5-Member Administrative Board. Powers include: Furnishing technical assistance, as requested, to persons subject to this act to further their compliance with the act or orders issued under the act; to make technical studies appropriate to realize the purposes and policies of the act and to make the results of such studies available to the public; and to refer matters to the attorney general with recommendations for intervention in a civil action brought by an aggrieved party or for the institution of a civil action by the attorney general and to advise, consult, and assist the attorney general on such matters.

V. Judicial Review: U. S. District Courts - Remedies: Injunction, ordering such affirmative action as may be appropriate, ordering reinstatement or hiring of employees, with or without back pay, if the discriminatory employment action was made on account of race, color, religion, sex or national origin.

VI. Attorney general may bring a civil action to enforce this act directly. Actions may also be brought by individuals.

VII. Record Keeping: Records must be kept by those subject to this act and reports made to facilitate the determination of whether unlawful employment practices have been or are being committed. Includes list of applicants who wish to participate in apprenticeship or other training programs, including the chronological order in which applications were received. Employers must furnish to the Commission, upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program.

EEOC GUIDELINES ON EMPLOYMENT TEST PROCEDURES, ISSUED August 24, 1966:

"The Commission . . . interprets 'Professionally Developed Ability Test' to mean a test which fairly measures the knowledge or skills required by the particular job or class of jobs which the applicant seeks, or which fairly affords the employer a chance to measure the applicant's ability to perform a particular job or class of jobs. The fact that a test was prepared by an individual or organization claiming expertise in test preparation does not, without more, justify its use within the meaning of Title VII."

ELABORATION: NEW GUIDELINES ON EMPLOYEE SELECTION PROCEDURES, August 1, 1970: These guidelines demand that employers using tests have available "Data Demonstrating that the test is predictive of or significantly correlated

with important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated."

The EEOC interpretation of 703 (h) thus permits only the use of job-related tests.

GRIGGS et al. v. DUKE POWER COMPANY
401 U. S. 424 (1971)

Certiorari to the U. S. Court of Appeals for the Fourth Circuit

FACTS:

1. Under Title VII of the Civil Rights Act of 1964, which provides for class actions for enforcement of its provisions, 13 of 14 Negroes employed at Duke's Dan River Steam Station at Draper, North Carolina, challenge respondent's requirement of a high school diploma or passing of intelligence tests as a condition of employment in or transfer to jobs at the plant.
2. These requirements were not directed at or intended to measure ability to learn to perform a particular job or category of jobs. The tests used are the Wonderlic Personnel Test, which purports to measure general intelligence, and the Bennett Mechanical Comprehension Test.
3. The U. S. District Court below found there was no showing of a racial purpose or invidious intent in the adoption of the high school diploma requirement or general intelligence test and that these standards had been applied fairly to whites and Negroes alike (upheld by Court of Appeals), and that residual discrimination arising from prior employment practices was insulated from remedial action (reversed by Court of Appeals).

QUESTION: Is an employer prohibited by the Civil Rights Act of 1964, Title VII, from requiring a high school education or passing of a standardized general intelligence test as a condition of employment in or transfer to jobs when (a) neither standard is shown to be significantly related to successful job

performance, (b) both requirements operate to disqualify Negroes at a substantially higher rate than white applicants, and (c) the jobs in question formerly had been filled only by white employees as part of a longstanding practice of giving preference to whites?

OPINION: Chief Justice Burger

1. The objective of Congress in the enactment of Title VII is plain from the language of the statute. It was to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of white employees over other employees.
2. Under this Act, practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to "freeze" the status quo of prior discriminatory employment practice. The Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation.
3. Congress did not intend by Title VII to guarantee a job to every person regardless of qualifications. The Act does not command that any person be hired simply because he was formerly the subject of discrimination, or because he is a member of a minority group. Discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed.

What is required by Congress is the removal of artifical, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification. The touchstone is business necessity. If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited.

4. On the record before us, neither the high school completion requirement nor the general intelligence test is shown to bear a demonstrable relationship to successful performance of the jobs for which it was used.

5. The evidence shows that employees who have not completed high school or taken the tests have continued to perform satisfactorily and make progress in departments for which the high school and test criteria are now used.

6. Legislative history relevant to this case indicates that the construction of § 703 (h), by the Equal Employment Commission (the agency charged with enforcing Title VII), to require that employment tests be job related comports with congressional intent.

DECISION: 8-0

Nothing in this Act precludes the use of testing or measuring procedures. What Congress has forbidden is giving these devices and mechanisms controlling force unless they are demonstrably a reasonable measure of job performance. What Congress has commanded is that any tests used must measure the person for the job and not the person in the abstract. Congress has not commanded that the less qualified be preferred over the better qualified simply because of minority origins. Far from disparaging job qualifications as such, Congress has made such qualifications the controlling factor, so that race, religion, nationality, and sex become irrelevant.

NO PART IN CASE: J. Brennan

SIGNIFICANT POST-GRIGGS QUESTIONS:

1. What methods of determining job relatedness are most appropriate?
2. Why was validity not mentioned in GRIGGS?
3. Is there a "right" way to validate?
4. What is the impact of validation upon testing?
5. What is valid? what judges say is valid
6. Why have definitions of validity been given by[1] attorneys and courts?
7. What role remains for judgment? Job analysis? What kind of job analysis is necessary?
8. What role exists for criterion related validity? for rational validity? for construct validity?